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20 Attorneys for Plaintiff, Patricia Desantis

21 **UNITED STATES DISTRICT COURT**
22 **NORTHERN DISTRICT OF CALIFORNIA**

23 PATRICIA DESANTIS, individually and as
24 Successor in Interest for RICHARD
25 DESANTIS, deceased, and as Guardian Ad
26 Litem for DANI DESANTIS, a minor and
27 TIMOTHY FARRELL, a minor,

28 Plaintiffs,
v.

CITY OF SANTA ROSA, *et al.*,

Defendants.

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Case No.: C 07 3386 JSW

PLAINTIFFS' MOTION *IN LIMINE*
NO. 5

Date: September 4, 2012
Time: 8:00 a.m.
Place: Courtroom 11, 19th floor
Judge: Jeffrey S. White

Trial Date: September 4, 2012

INTRODUCTION

Plaintiffs bring the following motion *in limine*:

1. EXCLUDE EVIDENCE OF ANY PRIOR MISCONDUCT OF THE MEDICAL EXAMINER: DR. KELLY ARTHUR-KENNY

DISCUSSION

Plaintiffs intend to call the Medical Examiner to testify at trial regarding her findings on the autopsy, including but not limited to the cause of death of Richard DeSantis. The autopsy report has been disclosed and has been admitted into evidence. Plaintiffs expect the Medical Examiner to testify consistent with the findings in her report.

Recently, during a trial preparation interview with the Doctor, Plaintiffs became aware that she has been sued regarding her conduct of an autopsy unrelated to this incident. The lawsuit was resolved by entering into a confidential settlement agreement. Plaintiffs remain unaware of the circumstances of the settlement and / or the issues in the lawsuit.

Additionally, Plaintiffs were advised that the Doctor was arrested for driving under the influence of alcohol and vicodin. She plead no contest or guilty after the charge was reduced to reckless driving.

Plaintiffs have discussed these matters with defense counsel, Caroline Fowler and have asked that no reference be made to either incident during cross examination. Defendants will not agree to such exclusion and require that this motion in Limine be filed.

Plaintiffs seek an order that Defendants be prohibited from referring to any character evidence or prior bad acts to impeach the testimony of the Medical Examiner in this case. The incidents mentioned herein are irrelevant to these proceedings and provide no probative value to any issue in this case. The inflammatory nature of the misconduct will prejudice the jury and is intended to confuse the issues. Defendants have no dispute with the proposed testimony of the Medical Examiner and merely intend to inflame the jury.

1 Plaintiffs have no knowledge of any other such testimony but request that the Defendants seek
2 leave of court before any testimony is elicited regarding misconduct of the Medical Examiner.

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5 Dated: August 16, 2012

6 Respectfully submitted,

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9 /s/
10 Eric M. Safire, Attorney for Plaintiffs
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